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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,487	07/13/2001	Keith Gunn	7560	6062

1688 7590 09/03/2002

POLSTER, LIEDER, WOODRUFF & LUCCHESI
763 SOUTH NEW BALLAS ROAD
ST. LOUIS, MO 63141-8750

EXAMINER

ALIMENTI, SUSAN C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/904,487	GUNN, KEITH	
	Examiner	Art Unit	
	Susan C. Alimenti	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-14, 16-21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leslie (US 147,849) and further in view of Lee (US 5,440,836).

Leslie discloses the claimed fountain structure except a pump is not mentioned in the design of the device.

As can be seen in Figures 1 and 2 Leslie's fountain comprises a planter A having an upper rim D and an interior J for draining water and for storing water in pipe N. The pipe or tubular post N is connected to a fountain or sprinkler head P for discharging a quantity of water. On the upper rim D a second planter C is positioned on and suspended from the exterior of the upper rim. Regarding claims 2-4 there are also, at least, a third and fourth planter (also designated with reference character C). The multiple planters are positioned at different heights, and upon examination of Figure 1 it can be seen that the planters are also positioned in a staggered relationship with one another that places one respective planter between two other planters as stated in claim 4. The tiered structure of the planter A has each successive rim extending circumferentially, therefore making the additional planters ready to receive a portion of the discharged water from the fountain/sprinkler head. The base H of Leslie's fountain structure has the greatest circumference of all the rims of the planter, allowing it to receive and

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properly drain all excess water that is expended by the water discharge device or sprinkler head.

The base further comprises support legs and is adapted to receive the entire structure thereon.

Leslie's device however does not mention the use of a pump for supplying the water to be discharged. It is noted that the use of a pump in these types of devices is quite common. Lee provides a teaching of the use of a pump in a similarly tiered fountain structure for the cultivation of plants. In Lee's device it can be seen in Figure 2 that a pump 62, positioned at the bottom of the structure, provides a supply of water to a tubular post 40 that is connected to a water discharge device or sprinkler. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a pump to supply a constant stream of water to Leslie's fountain structure in order to continuously circulate water through the planter.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leslie, in view of Lee, and further in view of Steffan (US 6,092,333).

Leslie, as modified, discloses the claimed invention except for the wheel assembly on the base. Steffan teaches that a wheel assembly is a common feature of a plant apparatus in order to allow movement across the ground as stated by Steffan in claim 3. Since a wheel assembly is commonly used in the art to provide mobility for a device or apparatus, it would have been obvious to one having ordinary skill in the art to modify Leslie's base to include a wheel assembly in order to transport the fountain structure.

Response to Arguments

4. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new grounds of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is (703)306-0360. The examiner can normally be reached on Monday-Thursday, 7:30am-5:30pm.

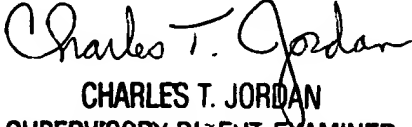
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

SCA
August 28, 2002


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600